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SENNIGER POWERS			KIDWELL, MICHELE M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 09/977,062
Filing Date: October 12, 2001
Appellant(s): SOSALLA ET AL.

DEC 05 2007
GROUP 3700

Richard L. Bridge
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 29, 2007 appealing from the Office action mailed March 30, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,297,424 OLSON et al. 10-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 – 13, 15 – 17, 19 – 20 and 23 – 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Olson et al. (US 6,297,424)

With respect to claim 1, Olson et al. (hereinafter "Olson") discloses a disposable absorbent article having an area which is visible when the article is worn, a color gradation in the area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color when the area is dry (one of fish 78), and a visible element (70) separate from the color gradation and disposed in the area at a location where the coloration is of lower intensity or absent such that the element remains visible and is not obscured by the color gradation as set forth in col. 2, lines 3 – 15; col. 3, lines 24 – 28; col. 7, lines 39 – 43; col. 13, lines 14 – 45 and figure 1.

As to claims 2 – 4, Olson discloses the visible element as a graphic, registration mark, and/or wetness indicator as set forth in col. 3, lines 29 – 32 and col. 4, lines 40 – 58.

With reference to claim 5, Olson discloses an article further comprising an outer cover (110) having an interior surface and an exterior surface, and an absorbent material disposed on the interior surface of the cover (44) said color gradation and said

wetness indicator being disposed on said cover as set forth in col. 9, lines 49 – 52 and in the figures.

As to claim 6, Olson discloses the wetness indicator comprising and active graphic (one of fish 78) as set forth in figure 1.

With reference to claim 7, Olson discloses an absorbent article as a pant having a front region, back region, crotch region and wetness indicator on a portion of the crotch region which is substantially free of color as set forth in figure 4.

As to claims 8 and 9, Olson discloses a coloration change from higher intensity to lower intensity generally in the direction of at least one of the side edges of the pant as set forth in col. 2, lines 4 – 15; col. 2, line 50 to col. 3, line 6; col. 13, lines 27 – 45 and figure 1.

Regarding claims 10 – 11, Olson discloses a color gradation involving only one color or a combination of different colors as set forth in col. 2, line 50 to col. 3, line 6 and col. 7, lines 39 – 43.

With respect to claim 12, Olson discloses an article further comprising a graphic and a registration mark on the article as set forth in col. 4, lines 46 – 49 and in figure 1. Olson discloses the use of licensed characters as suitable graphics, which are considered registration marks, along with other types of graphics.

The examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim

drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As to claim 13, Olson discloses an absorbent article as a pant having a crotch region wherein the registration mark is located on the crotch region (78) as set forth in figure 1.

Regarding claim 15, Olson discloses a disposable absorbent pant having a front waist region, a back waist region, and a crotch region extending between and interconnecting the front and back waist regions, the pant comprising an outer cover with an interior surface and an opposite exterior surface, an absorbent material disposed on the interior surface of the outer cover (figure 7A), a color gradation on an area of the pant which is visible when the pant is worn, said color gradation providing a coloration which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region when the pant is dry (one of fish 78), and a wetness indicator separate from said color gradation and disposed in the crotch region at a location where the coloration of the color gradation is of lower intensity or absent such that any indication of wetness by the wetness indicator remains visible and is not obscured by the color gradation as set forth in col. 2, lines 3 – 15; col. 3, lines 24 – 28; col. 7, lines 39 – 43; col. 13, lines 14 – 45 and figure 1.

As to claim 16, Olson discloses an absorbent pant wherein the wetness indicator comprises an active graphic (one of fish 78) as set forth in figure 1.

With reference to claims 17 and 19, Olson discloses a printed color gradation in the area as set forth in figure 1.

With respect to claim 20, see col. 2, lines 36 – 49.

Regarding claim 23, Olson discloses a disposable absorbent article having an area which is visible when the article is worn, a permanent graphic (70) comprising a color gradation in the area providing a coloration which varies in intensity over the area from a color of higher intensity of color to a lower intensity of color, and a visible element (78) separate from the permanent graphic and disposed in the area at a location where the coloration of the color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation as set forth in the figures.

As to claim 24, Olson discloses a disposable absorbent article comprising a color gradation that is visible when the article is worn, said color gradation comprising a coloration that varies in intensity from an area of higher intensity of color to a separate area of lower intensity of color, and a visible element (70) separate from the color gradation and disposed at a location where the coloration of the color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation as set forth in the figures.

(10) Response to Argument

Regarding the appellant's argument that Olson fails to disclose or suggest an absorbent article having a color gradation that provides coloration when the area is dry,

the examiner disagrees. Olson discloses in col. 2, lines 3 – 15 that the active graphic or fading graphic refers to a graphic that becomes invisible or significantly less visible with the passage of time when exposed to the environment but not to urine. Therefore, the color gradation change in intensity happens when the article is dry.

In response to appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., color gradation that includes areas of incrementally varying color intensity) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The appellant states that the term "color gradation" is a visible change in color (see Appeal Brief, page 8, line 5) but continues to argue that the visible change in color of the active or fading graphic does not constitute a color gradation. As supported by the Appeal Brief on page 8, a color gradation is a visible change in color. As previously explained, the active graphic or fading graphic refers to a graphic that becomes invisible or significantly less visible with the passage of time when exposed to the environment but not to urine (see Olson, col. 2, line 36 to col. 3, line 11). Therefore, the appellant's argument is not persuasive.

With reference to the appellant's argument that the permanent graphic cannot function as a wetness indicator, the examiner also disagrees. The applicant refers to col. 3, lines 24 – 29 for the definition of a permanent character graphic, which the examiner also refers to. The section states that there is no substantial change in

visibility. This does not suggest that there is no change, but that the change is minimal. Nonetheless, there is a change in response to urine as supported by lines 29 – 54 of col. 3. Lines 51 – 54 also state that the graphic may be configured so that the entire graphic does not substantially change, which suggests that some portions may be allowed to change while other portions have substantially no change.

The appellant also argues the use of permanent ink associated with the fading graphic. The examiner refers to col. 2, lines 36 – 49, which discloses that the fading graphic may be formed from an ink that changes color when exposed to urine. The ink is permanent in that it does not dissolve. It simply changes color to blend in with the background, but it is still there.

As to claim 15, the examiner contends that the appellant's arguments are not commensurate with the scope of the claim. The appellant argues the direction of the variation of the color intensity, but this is not required in order to meet the claimed limitation. The claim requires a color gradation, which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region when the pant is dry. A graphic is not even required to meet this limitation. One could consider the area having a permanent graphic versus an area that has no graphic. Alternatively, the fading graphic is still applicable in that it may be considered with the top of the graphic being in the vicinity of the waist region and the bottom being toward the crotch region. The variation in intensity could be considered over an amount of time since Olson discloses that the graphic fades when exposed to the environment.

A similar argument holds true with respect to claims 23 and 24. A permanent graphic comprising a color gradation in an area (as recited in claim 23) or a coloration (as recited in claim 24) may include the graphic and a surrounding area. In which case, the intensity varies over the area to include a higher intensity (permanent graphic) to a lower intensity (area with no graphic).

Alternatively, as earlier discussed, the disclosure of a permanent graphic is also applicable due to the fact that some change is allowed, just not substantial change.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Michele Kidwell

Conferees:

Tatyana Zalukaeva

Supervisory Patent Examiner

Art Unit 3761



Angela Sykes

Supervisory Patent Examiner

Art Unit 3762

